



# NIXON PEABODY LLP

ATTORNEYS AT LAW

Suite 900  
401 9th Street, N.W.  
Washington, D.C. 20004-2128  
(202) 585-8000  
Fax: (202) 585-8080

Veronica M. Ahern  
Direct Dial: (202) 585-8321  
E-Mail: vahern@nixonpeabody.com

August 1, 2002

DOCKET FILE COPY ORIGINAL

02-234

RECEIVED

AUG - 1 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

## VIA HAND DELIVERY

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

RE: Petition for Waiver – QUALCOMM Incorporated  
EXPEDITED ACTION REQUESTED

Dear Ms. Dortch:

Attached for filing is an original and four copies of a Petition for Waiver of QUALCOMM Incorporated. Please stamp and return the attached "S&R" copy.

Please direct any questions to the undersigned.

Respectfully submitted,

Veronica M. Ahern

cc : Office of Chairman Powell (2)  
Office of Commissioner Abernathy (2)  
Office of Commissioner Copps (2)  
Office of Commissioner Martin (2)  
Wireless Telecommunications Bureau:  
- Office of Bureau Chief (3)  
- Auctions and Industry Analysis Division (3)  
- Policy Division (3)  
Office of General Counsel (3)  
Office of Managing Director (3)

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

RECEIVED

In the Matter of )

QUALCOMM Incorporated )

Petition for Waiver of Auction Discount )  
Voucher Terms and Conditions )

AUG - 1 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

02-234

**WAIVER: EXPEDITED ACTION REQUESTED**

**PETITION FOR WAIVER**

QUALCOMM Incorporated ("QUALCOMM"), by its attorneys, hereby petitions the Federal Communications Commission ("FCC" or "Commission"), pursuant to Sections 1.3 and 1.925 of the Commission's Rules, for waiver of one of the terms and conditions implicitly imposed upon the Commission's grant of an Auction Discount Voucher ("ADV") to QUALCOMM.<sup>1</sup> Specifically, QUALCOMM requests that the Commission permit the ADV to be used for payment of existing auction debt, including installment payments, interest and fees, rather than future auction debt. If the Commission grants this waiver, QUALCOMM will transfer the voucher to one or more of the wireless licensees still owing installment payments, interest and fees to the Commission. As described below, QUALCOMM believes this proposal is in the public interest because it will help to sustain the viability of designated entities and allow for prompt and beneficial use of the ADV. QUALCOMM also requests expedited treatment of this Petition in order to make the benefits of the waiver available as quickly as possible.

---

<sup>1</sup> *QUALCOMM Incorporated, Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia, Circuit Court of Appeals*, 16 FCC Rcd 4042 (2000) ("ADV Order").

## I. BACKGROUND

### A. The ADV

#### 1. The QUALCOMM Case

On June 8, 2000, the Commission awarded QUALCOMM an Auction Discount Voucher in the amount of \$125,273,878, pursuant to the mandate of the District of Columbia Circuit Court of Appeals.<sup>2</sup> In the *QUALCOMM Case*, and its predecessor, *Freeman Engineering v. FCC*, 103 F.3d 169 (1997), QUALCOMM had argued successfully that it was wrongfully deprived of a “pioneers’ preference” and that it should have been awarded spectrum commensurate with that awarded to other pioneers’ preference winners.<sup>3</sup> However, by the time of the 1999 decision, the spectrum QUALCOMM had originally sought, the Miami-Fort Lauderdale Major Trading Area (“MTA”), was not available. The Commission staff and QUALCOMM met over a period of months to try to identify appropriate alternative spectrum, but eventually concluded that mutually acceptable spectrum could not be found. In view of this impasse, Commission staff and QUALCOMM decided on an alternative method of satisfying the Court’s mandate. The parties agreed that, in lieu of granting QUALCOMM a specific license, the Commission would award QUALCOMM a transferable voucher that QUALCOMM “could use to obtain a license of its own choosing in forthcoming spectrum auctions, including the upcoming 700 MHz auction.”<sup>4</sup> Since the license was made transferable, it was also anticipated that QUALCOMM could invest in companies bidding in the spectrum auctions by using the ADV.

---

<sup>2</sup> See *QUALCOMM v. FCC*, 181 F.3d 1370 (D.C. Cir. 1999) (“*QUALCOMM Case*”).

<sup>3</sup> Other PCS pioneers’ preference winners had been awarded the 30 MHz A Block MTA in New York, Los Angeles and Washington, D.C.

<sup>4</sup> *ADV Order* at para. 9. QUALCOMM had filed a Petition for Declaratory Ruling seeking spectrum in the 700 MHz frequency range that was then scheduled to be auctioned in 2000. See *infra* at n. 8.

## 2. Amount of the ADV

The amount of the ADV was calculated with the goal of enabling QUALCOMM to obtain spectrum commensurate with the Miami MTA, for a cost equivalent to the statutory formula for pioneers' preference winners.<sup>5</sup> The Commission determined that QUALCOMM would have paid \$60,726,122 for the Miami MTA, which was valued at \$186,000,000. Thus, a reasonable amount for the ADV would be \$125,273,878.

## 3. Terms and Conditions

The Commission placed a number of terms and conditions on QUALCOMM's use of the ADV. Consistent with conditions placed upon other pioneers' preference winners, the Commission required that QUALCOMM and its transferees use the ADV to build a system that substantially uses the design and technologies upon which QUALCOMM's preference is based. The QUALCOMM preference was based upon its development of Code Division Multiple Access ("CDMA") technology. Thus, the ADV can only be used for further development and application of CDMA-based technology.<sup>6</sup>

In addition, the Commission placed a time limit on use of the ADV. Specifically, QUALCOMM may use the ADV in any auction in which Form 175's have been accepted for three years from June 8, 2000.<sup>7</sup> It is noteworthy that the *ADV Order* does not reject use of the ADV in a previous action, i.e., for installment payments. Rather, an assumption was apparently made by both QUALCOMM and the Commission staff that the ADV would be used in the 700 MHz auction, scheduled to begin shortly after the release of the *ADV Order*. This assumption

---

<sup>5</sup> See 47 U.S.C. § 309(j)(13).

<sup>6</sup> *ADV Order* at para. 28. CDMA is the fastest growing wireless technology. It allows for significant capacity increases, improved call quality, simplified system planning and enhanced privacy through digital coding.

<sup>7</sup> *Id.* at para. 29.

was reasonable given that QUALCOMM had formally and informally expressed interest in 700 MHz spectrum.<sup>8</sup> However, the ADV was not limited to use in the 700 MHz auction, and, as discussed below, it is doubtful that the voucher can be used in the 700 MHz auction.

The Commission also placed restrictions on use of the ADV stating that the ADV should only be used to adjust a winning bid and not for an upfront payment, nor for withdrawal or default payments.<sup>9</sup> Again, it is noteworthy that the Commission does not mention installment payments. Since it was assumed that QUALCOMM would use the ADV only in future auctions, use of the ADV for installment payments was not considered in the *ADV Order*. Nor does QUALCOMM recall it being discussed with Commission staff.

#### **4. ADV Transfers**

In March 2001, QUALCOMM transferred the ADV, in its entirety, to Leap Wireless International ("LWI") for use in Auction No. 35. Some of the licenses in Auction 35 had been re-auctioned after cancellation by the Commission following the default of NextWave Personal Communications, Inc. LWI had been the winning bidder for many of those licenses and intended to use the ADV to purchase these. However, on June 22, 2001, the D.C. Circuit Court of Appeals found that Section 525 of the Bankruptcy Code prevented the cancellation of the NextWave licenses.<sup>10</sup> This decision meant that LWI could not acquire these licenses and necessitated the return of the ADV to QUALCOMM. Subsequently, QUALCOMM transferred \$10,848,800 of the ADV to Summit Wireless, which Summit used for payment on the Jackson,

---

<sup>8</sup> See *QUALCOMM Incorporated*, Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals, DA 00-219, filed January 28, 2000. This Petition requested that the Commission satisfy the mandate by awarding QUALCOMM one of six regional 20 MHz licenses in the 700 MHz band. This Petition was dismissed as moot in the *ADV Order*.

<sup>9</sup> *ADV Order* at para. 32.

<sup>10</sup> See *NextWave Personal Communications, Inc. v. FCC*, 254 F.3d 130 (2001).

Mississippi BTA 210 license. Consequently, QUALCOMM has a total of \$114,425,078 remaining in its ADV.

## **B. Auctions**

### **1. Installment Payments**

Section 309(j) of the Communications Act authorizes the FCC to use competitive bidding when there are mutually exclusive applications for an initial license.<sup>11</sup> The Act also requires that the Commission design the auctions to achieve certain objectives, including

Promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies and businesses owned by members of minority groups and women.<sup>12</sup>

The Commission has consistently sought to ensure that these "designated entities" be encouraged to participate in the auction process and has employed a variety of measures to do so, including bidding credits, set-asides and installment payments, with favorable interest rates. Installment payments were used in the Commission auctions for PCS C and F Block licenses, Auctions 5, 10 and 11. However, use of installment payments proved to be unwise as a number of successful bidders became unable to make payments. Despite the Commission's best efforts to fashion a remedy for these licensees, several declared bankruptcy and their licenses were canceled. The Commission has discontinued use of installment payments, recognizing that "these payments seemingly placed the Commission in the role of being both a regulator and a lender to the wireless industry."<sup>13</sup>

---

<sup>11</sup> 47 U.S.C. § 309(j).

<sup>12</sup> 47 U.S.C. § 309(j)(3)(A).

<sup>13</sup> *FCC Report to Congress on Spectrum Auctions*, WT Docket No. 97-150, 1997 FCC LEXIS 7490 at para 29 (1997).

Nevertheless, several companies who acquired their licenses in Auctions 5, 10 and 11 continue to make installment payments to the FCC.

## **2. Anticipated Auctions**

In June of 2000, when QUALCOMM and the Commission agreed that the ADV would be a satisfactory alternative to an award of "suitable spectrum," both parties anticipated that there would be auctions held within the three year time period that would be appropriate for CDMA-based technology. In particular, the FCC staff and QUALCOMM were expecting that spectrum at 700 MHz would be auctioned. In fact, of the 13 auctions held since June of 2000, only one – Auction 35 – involved spectrum for which CDMA-based technology would be appropriate. As described above, QUALCOMM transferred the ADV in its entirety for use in Auction 35, but when the results of Auction 35 were disrupted by the *NextWave* litigation, QUALCOMM was only able to transfer \$10,848,800 of the ADV.

With regard to the 700 MHz auction anticipated in 2000, there have been multiple delays and disruptions. Originally, licenses in the 747-762 and 777-792 MHz bands (upper 700 MHz Band) were scheduled to be auctioned in May 2000 in Auction 31. The first postponement was only for one month - until June of 2000. Since then Auction 31 has been postponed six times, most recently on July 26, 2002.

While the auction of 30 MHz in a frequency band attractive for Commercial Mobile Radio Service Applications would seem to be an excellent opportunity for use of the ADV, QUALCOMM is not confident that the auction will be completed within the three-year ADV time limit. Congress has passed legislation to delay indefinitely Auction 31 in view of various uncertainties and changed circumstances.<sup>14</sup> The Auction Reform Act provides an interesting

---

<sup>14</sup> Auction Reform Act of 2002, Pub.L. 107-195, 116 Stat. 715 (2002).

catalog of reasons for delay of the 700 MHz auction, including: (1) no comprehensive plan for 3G services, (2) an incomplete National Telecommunications and Information Administration/Department of Defense study on 3G spectrum sharing; (3) interference problems in the 800 MHz band, (4) 700 MHz band encumbrance, and (5) uncertain bandclearing rules. The Commission's indefinite delay of Auction 31 confirms QUALCOMM'S fear that it may be 2004 or later before there is an auction of this spectrum.

Auction 44, concerning frequencies between 698-746 MHz, known as the Lower 700 MHz Band, is scheduled to begin on August 27, 2002. It is clear from a review of the 128 qualified bidders that this spectrum is not likely to be used in a CDMA-based environment. Several of the bidders are television broadcasting companies and many others are companies seeking to serve rural areas where the capacity advantages of CDMA are unnecessary.

Finally, the Supreme Court's acceptance of certiorari in *NextWave v. FCC* places the spectrum in Auction 35 in a legal limbo that is not likely to be resolved for several years.

Thus, the opportunities for use of the ADV anticipated by QUALCOMM and the Commission in early 2000 have simply not come to fruition. Auction 35 is hopelessly mired in time-consuming litigation and Auction 31 is unlikely to take place before a plethora of policy problems are resolved. It becomes increasingly clear that QUALCOMM's chances to use the ADV in future auctions are extremely limited.



## **C. The Wireless Industry**

### **1. The Morgan Stanley Report**

The general state of the wireless industry has also changed since June of 2000, as the attached Report of Morgan Stanley shows.<sup>15</sup> The equity market performance of the U.S. wireless sector has decreased more than 70% in the last 24 months, leading Morgan Stanley to the conclusion that

While a consistent underperformer ... in the past 24 months, the wireless sector has experienced significant weakness since the beginning of 2002.<sup>16</sup>

In addition to declining stock prices, Morgan Stanley also pointed to changes in the credit ratings of several bellwether wireless companies. AT&T Wireless was downgraded by Moody's in June 2002. Nextel was also downgraded in June, as was Sprint. Cingular was downgraded in November 2001 and Verizon was placed on review in May of 2002. In general, on June 21, 2002 Moody's changed its outlook for the wireless industry to negative.

With regard to high yield debt, the situation is also of concern. The bid price of wireless high yield debt is now trading at 50.9% of par, as compared with an index of overall high yield debt now trading at 82.9% of par. This has prompted Morgan Stanley to recognize that

Liquidity concerns surrounding wireless carriers have put meaningful pressure on the prices of high yield securities in the wireless sector.<sup>17</sup>

All of this analysis has caused Morgan Stanley to conclude that "there are significant problems currently plaguing the industry" and that "access to capital continues to tighten."<sup>18</sup>

---

<sup>15</sup> Morgan Stanley, with over 700 offices in 28 countries, is an internationally respected financial services company providing advice to individual, institutional and investment banking clients.

<sup>16</sup> Morgan Stanley Report, July 10, 2002, at p. 1 (Attachment A).

<sup>17</sup> Morgan Stanley Report at p. 5.

## 2. Putting It All Together

QUALCOMM's view of the troubles facing the wireless industry was confirmed by the Morgan Stanley Report. Although there is startling potential for additional applications, like wireless High Data Rate products, liquidity issues are going to plague the industry for the immediate future. In QUALCOMM's view, this will make it very difficult for under capitalized companies to survive. In particular, QUALCOMM considers it likely that some wireless companies will soon be unable to make their installment payments to the FCC.<sup>19</sup>

At the same time, QUALCOMM holds an ADV worth about \$114,000,000 that it wishes to use to support CDMA-based technology users. Given the uncertainties about future auctions where CDMA technology will be appropriate, it is likely that QUALCOMM will not be able to use the ADV in the foreseeable future and the mandate of the D.C. Circuit in the *QUALCOMM Case* will not be satisfied.

In this Petition, QUALCOMM proposes a way to both help the undercapitalized companies and put the ADV to good use: waive the implicit requirement that the ADV be used in auctions taking place after June 8, 2000 and allow it to be used to satisfy debt owed in Auctions 5, 10 and 11. This approach is entirely consistent with the recent Testimony of Chairman Powell before the Committee on Commerce, Science and Transportation of the United States Senate on July 30, 2002. There the Chairman outlined six critical elements to managing the current turmoil in the telecommunications industry. Third among his critical elements is "Restoring Financial Health: Cleaning Up the Balance Sheets", in which the Chairman urges

---

(Footnote continued from previous page)

<sup>18</sup> *Id.* at p. 7.

<sup>19</sup> QUALCOMM has been approached by several companies seeking a QUALCOMM investment so as to enable these companies to continue to make installment payments and/or to satisfy construction build-out requirements.

companies to pay down their debt.<sup>20</sup> Allowing the ADV to be used for this purpose is a win/win situation for all concerned.

## II. PETITION

### A. This Petition Meets the Standard for Waiver

Pursuant to Section 1.3 of the Commission's rules, any provision of the rules "may be waived by the Commission on its own motion or on petition if good cause therefor is shown."<sup>21</sup>

In cases involving wireless services, the rules are more specific:

The Commission may grant a request for waiver if it is shown that:

the underlying purpose of the Rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest;<sup>22</sup>

QUALCOMM recognizes that under the law, FCC rules are presumed to apply and that a petitioner bears a heavy burden.<sup>23</sup> We understand that only when "special circumstances warrant a deviation and such deviation will serve the public interest" will the Commission grant a waiver.<sup>24</sup> In making this determination, the Commission may take into account considerations of hardship, equity or more effective implementation of overall policy.<sup>25</sup>

In this case, waiver of the rule to allow the ADV to be used to retire installment payment debt, meets all the necessary standards.

---

<sup>20</sup> "Financial Turmoil in the Telecommunications Marketplace: Maintaining the Operations of Essential Communications", written statement of Michael K. Powell before the Senate Committee on Commerce, Science and Transportation, July 30, 2002.

<sup>21</sup> 47 C.F.R. § 1.3.

<sup>22</sup> 47 C.F.R. § 1.925.

<sup>23</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. Den.*, 409 U.S. 1027 (1972).

<sup>24</sup> *Northeast Cellular Telephone v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>25</sup> *WAIT Radio* at 1159.

## 1. The Underlying Purpose of the Rule

The award of the ADV was intended to satisfy the mandate of the DC Circuit to provide QUALCOMM with "suitable spectrum." Both QUALCOMM and the Commission agreed that, if an award of specific spectrum was not practicable, a transferable ADV would be a reasonable substitute. It would allow QUALCOMM to select its own spectrum, if it chose to participate in an auction. If not, it would allow QUALCOMM to make an investment in a spectrum licensee using CDMA-based technology.<sup>26</sup>

The proposal to allow use of the ADV to retire existing debt serves that latter purpose. QUALCOMM will invest in a company using CDMA technology by transferring the ADV to be used to make one or more installment payments.

At this point, QUALCOMM has no specific company in mind, although it has been approached by several. QUALCOMM will evaluate investment opportunities presented to it. If an opportunity appears to invest in a CDMA-based company with a promising business plan, QUALCOMM would consider whether such investment would be consistent with the Commission's rules regarding eligibility for designated entity status.<sup>27</sup> If it were possible to make the investment without violating such rules, QUALCOMM would transfer some or all of the ADV to be used in making an installment payment. It should be emphasized that the decision to invest in a CDMA-based company will be market-driven. That is, QUALCOMM will not make a foolish investment solely to make use of the ADV. The company receiving the investment will have effective management, a good business plan, and solid fundamentals. It is

---

<sup>26</sup> The condition requiring use of CDMA technology derives from the original pioneer's preference proceedings where the awardees were required to make "substantial use" of the technology for which they were awarded a preference. See *Amendment of the Commission's Rules to Establish Personal Communications Services*, 9 FCC Rcd 1337 at 1339 (1994).

<sup>27</sup> See 47 C.F.R. § 1.2110.

likely that this company will be a victim of the tight capital market, as described by Morgan Stanley.

Use of the ADV to retire installment payment debt satisfies the underlying purpose of the rule, which was to allow QUALCOMM to invest in CDMA-using PCS licensees. On the other hand, the underlying purpose of the rule will *not* be served if the waiver is *not* granted. It is very unlikely that CDMA suitable spectrum will be auctioned before June 2003. Thus, QUALCOMM will be deprived of the "suitable spectrum" mandated by the D.C. Circuit.

Nor is it sufficient to simply extend the period beyond the 2003 deadline. The *QUALCOMM Case* emphasized the requirement of Section 402(h) of the Communications Act that the Commission is required to "carry out the judgment of the court" "forthwith," meaning "immediately." To further delay the award of suitable spectrum runs counter to the mandate of the court, as well as to the requirements of the Act.

Thus, the underlying purpose would not be served if QUALCOMM were required to continue to hold the ADV and wait for the opportunity to invest in "suitable spectrum." The purpose will be served by a grant of the waiver requested herein.

## **2. The Public Interest**

Grant of the requested waiver would be in the public interest because it would allow for use of the ADV to help sustain the viability of one or more designated entities. To some degree, the success of the Commission's auction program, which is scheduled to terminate in 2007, will be measured on how effective the Commission was in promoting economic opportunity for designated entities and avoiding excessive concentration of licenses. To the extent that one or more designated entities can be sustained through this period of economic uncertainty, the intent

of Congress in establishing the “DE” program – and of the Commission in implementing it – will be satisfied. Certainly that serves the public interest.

The public interest will also be served by allowing QUALCOMM to use the ADV within the original 3-year period. QUALCOMM accepted the ADV as a substitute for spectrum because it believed there would be at least 2 opportunities to invest in CDMA-technology companies within a year: Auctions 31 and 35. Of course, QUALCOMM understood there was some risk of delay, but QUALCOMM would not have accepted an ADV if it thought any chance of recovery would be more than three years in the future. It is inconsistent with the Commission’s obligations under the mandate of the *QUALCOMM Case* to expect QUALCOMM to postpone indefinitely its opportunity for investment in “suitable spectrum.” The public interest requires compliance with Section 402(h) of the Act. In this case, that means the Commission should grant QUALCOMM the opportunity to use the ADV “forthwith,” without having to wait for an uncertain future auction.

**B. This Request Is Not Barred By Law Or Policy**

The only obstacle to the Commission’s grant of this Petition for Waiver would be a finding that grant is barred by law or policy, other than telecommunications law or policy. Anticipating this matter, QUALCOMM has met with officials from the Office of Management and Budget and the U.S. Congress to explore whether use of the ADV to retire existing debt, rather than use in a future auction, would be permissible. In each case, we have received informal assurances that there does not appear to be any prohibition in law or policy to such use. None of the agencies we consulted believed it appropriate to make a formal decision on the matter until the question of consistency with telecommunications law and policy was decided.

Thus, we decided to file this Petition for Waiver to provide the vehicle by which a formal decision can be made.

### III. CONCLUSION

QUALCOMM requests that the Commission waive the requirement that the Auction Discount Voucher be used only in auctions occurring after June 8, 2000.<sup>28</sup> Instead, QUALCOMM will use the ADV to invest in Designated Entities by retiring some or all of their installment payment debt. Grant of this request will serve the public interest by helping to sustain the viability of those companies and by allowing prompt and beneficial use of the ADV. QUALCOMM also requests that the Commission expedite action on this Petition.

Respectfully submitted,



---

Veronica M. Ahern

Nixon Peabody LLP  
401 Ninth Street, NW – Suite 900  
Washington, DC 20004  
(202) 585-8321  
Attorneys for QUALCOMM Incorporated

Date: August 1, 2002

Exhibit: Morgan Stanley Report

---

<sup>28</sup> To the extent that it is necessary to also waive other rules, *e.g.*, installment payment requirements, in order to allow use of the ADV for this purpose, such additional waiver is also request.

## **EXHIBIT A**



# Wireless Sector Overview



## Discussion Materials

12 July 2002

---

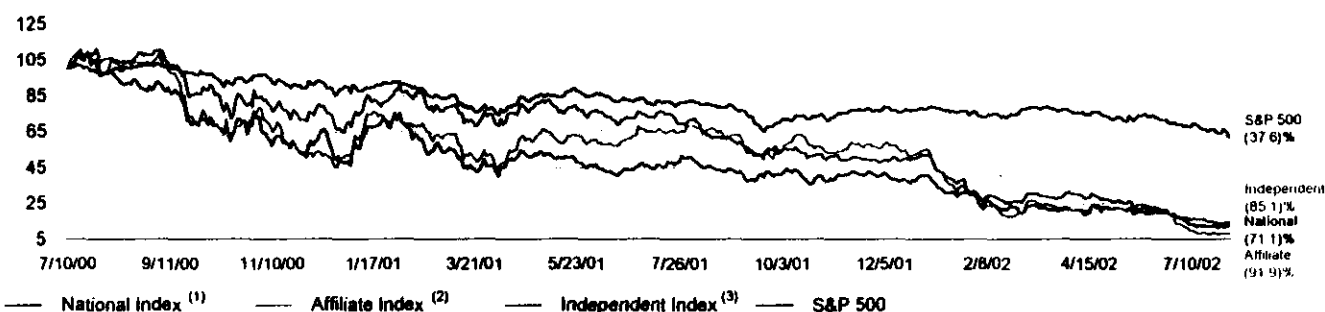
# Equity Market Performance of U.S. Wireless Sector

## Trading Performance

- While a consistent underperformer relative to the S&P in the past 24 months, the wireless sector has experienced significant weakness since the beginning of 2002

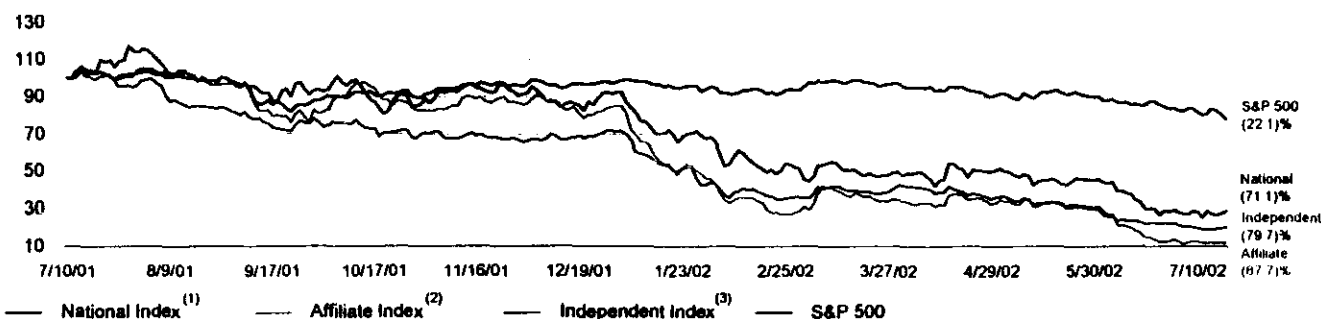
### Indexed Price Performance

Last Twenty-Four Months



### Indexed Price Performance

Last Twelve Months



#### Notes

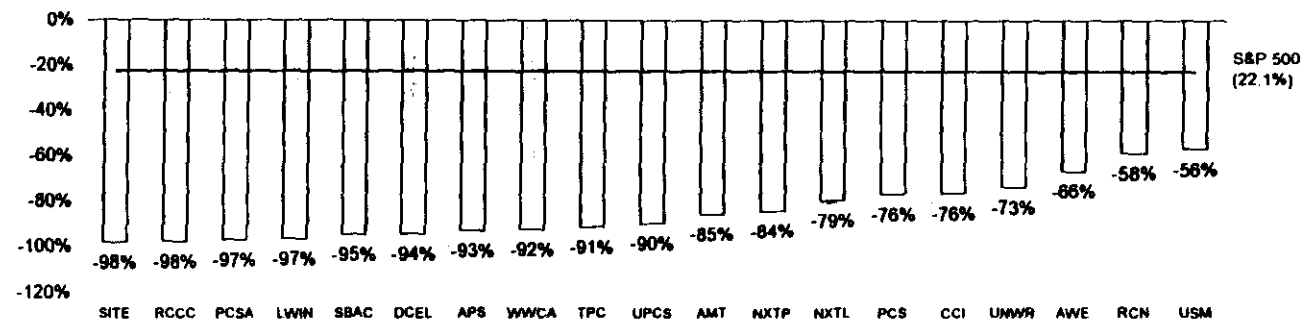
1. Large Cap Index includes AT&T Wireless, Nextel and Sprint PCS
2. Affiliate Index includes AirGate, Alamogordo, Nextel Partners, Triton PCS, Ubiquitel and US Unwired
3. Independent Index includes Rural Cellular, US Cellular, Western Wireless, Leap Wireless and Dobson Communication

## Wireless Sector Overview

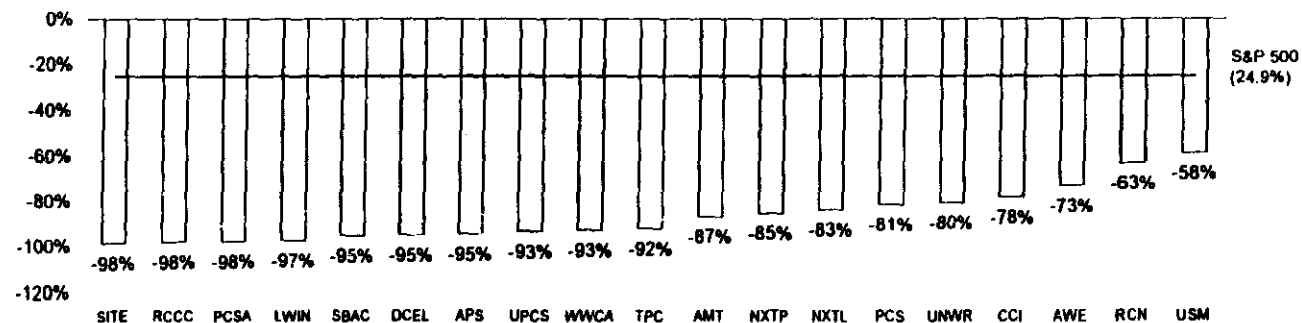
## Overview of U.S. Wireless Sector

Trading Analysis <sup>(1)</sup>

- All major wireless companies have suffered meaningful declines in market valuations over the past year
- Highly leveraged companies and those exposed to roaming have been the hardest hit

LTM Performance  
%

Source: FactSet

Discount to LTM High  
%

Source: FactSet

# Morgan Stanley Equity Research Commentary

## MS Equity Research Industry View: Cautious

*"The wireless telecom services industry continues to face low profitability and an intensely competitive environment that is leading to significant price declines. We want to see more cost cutting, especially on CPGA, price stabilization, or consolidation to be more positive on the group."*

— Morgan Stanley, June 26, 2002

## Credit Continues to Get Tighter

*"Worldcom's huge restatement of EBITDA should significantly tighten credit for the already-battered telecom industry. Wireless operators that require new capital, refinancings, or covenant waivers now face much increased financial risk, in our opinion."*

— Morgan Stanley, June 26, 2002

## Morgan Stanley Analyst Estimates

Company	Rating	Current Price <sup>(1)</sup> \$	Price Target \$	EBITDA		AV/EBITDA	
				2002 \$MM	2003 \$MM	2002 x	2003 x
American Tower Corp.	Equal-weight	2.58	7.00	329.3	425.4	12.3	9.5
Alamosa Holdings	Equal-weight	1.10	--	23.0	100.0	38.5	8.9
Alltel Corporation	Overweight	44.13	68.00	3,127.0	3,408.0	5.6	5.2
AT&T Wireless	Overweight	5.45	12.00	3,836.0	4,637.0	5.6	4.8
Crown Castle Corp.	Overweight	3.37	8.00	367.0	461.0	11.3	9.0
Dobson Communications	Underweight	0.90	--	251.0	261.0	8.1	7.8
Leap Wireless Intl	Equal-weight	0.90	--	(86.0)	169.0	NM	10.2
Nextel	Equal-weight	3.06	8.00	2,450.0	3,024.0	6.1	5.0
Nextel Partners Inc.	Equal-weight	2.36	--	(8.0)	169.0	NM	9.0
Sprint PCS Group	Equal-weight	5.54	--	2,874.0	3,868.0	8.4	6.2
AirGate PCS	Underweight	1.44	--	(21.0)	98.0	NM	6.4
Rural Cellular Corp.	Underweight	0.97	--	208.0	211.0	8.4	8.3
Rogers Wireless	Equal-weight	7.49	10.00	270.0	344.0	9.3	7.3
SBA Communications	Equal-weight	1.20	5.00	81.0	115.0	12.0	8.4
SpectraSite Holdings	Underweight	0.13	--	128.0	185.0	18.7	13.0
Triton PCS	Equal-weight	3.57	14.00	151.0	227.0	9.6	6.4
US Unwired Inc.	Equal-weight	2.70	--	5.0	56.0	NM	12.0
UbiquiTel Inc.	Underweight	0.74	--	(34.0)	32.0	NM	11.3
US Cellular Corporation	Equal-weight	25.20	48.00	665.0	669.0	3.8	3.7
Western Wireless	Underweight	3.12	--	323.0	316.0	8.0	8.2

Morgan Stanley

Notes  
1. As of July 10, 2002

## Credit Rating Views

Moody's - June 21, 2002

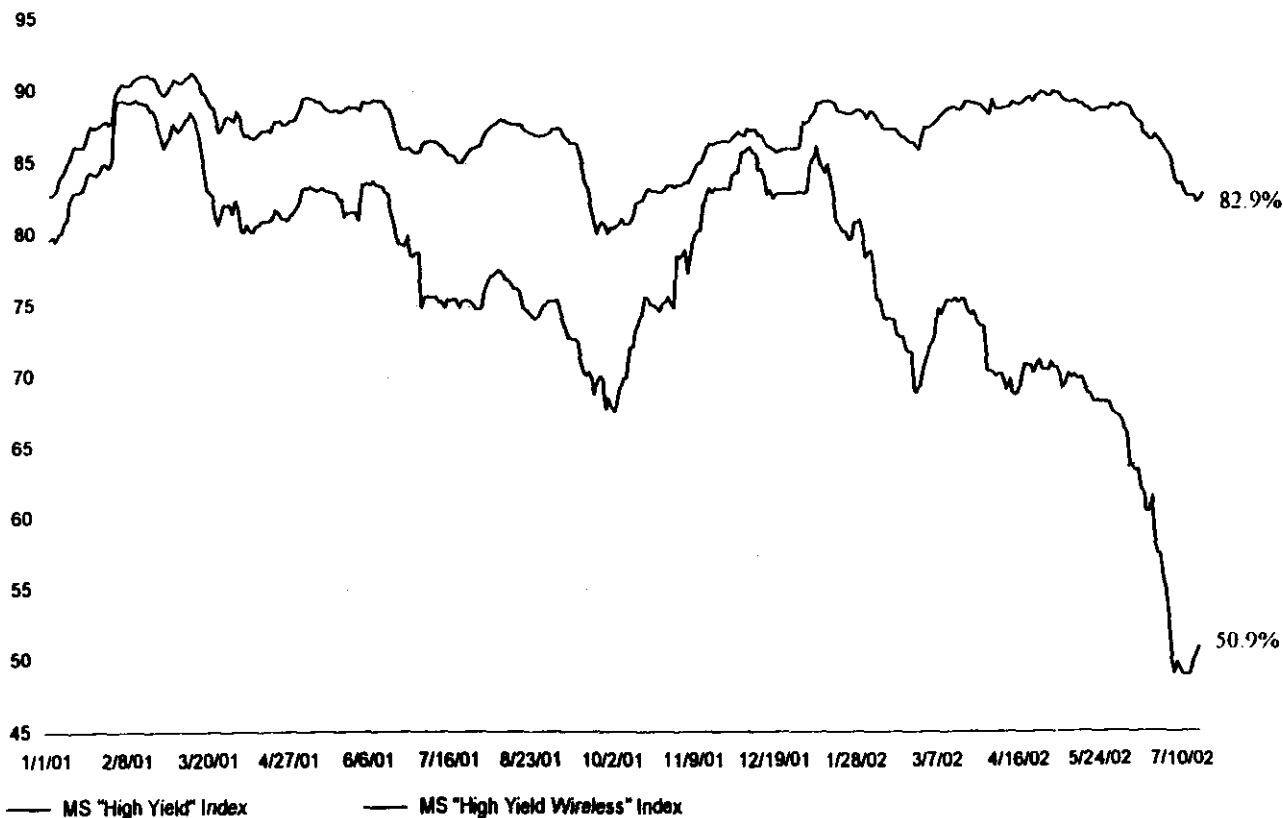
- **AT&T Wireless** - revised down to **Negative** in **June 2002**
  - **Nextel** - revised down to **Negative** in **June 2002**
  - **Sprint** - downgraded in **June 2002**
  - **Verizon** - on review in **May 2002**
  - **Cingular**- downgraded **November 2001**
- On June 21, 2002, Moody's changed its outlook for the wireless industry to negative and placed a majority of the non-investment grade US wireless operators on review for possible downgrade. The grim message was due primarily to **concerns of increasing competition and doubts about the industry growth rate.**
    - "Recent announcements from Sprint PCS and two of its affiliates have renewed concern at Moody's that the market may **already be more mature than expected** and that what, in the second half of 2001, could previously have been interpreted as a cyclical downturn, is now more secular in nature"
    - "Over the past nine quarters, Sprint PCS led the industry in net subscriber additions in all quarter except 1Q01, ... Thus the announcement that Sprint PCS would add only 300,000 subscribers in 2Q02, and, for the full year, **10% to 15% fewer than guidance** provided in February, is **particularly troubling**"
  - Some analysts believe that the wireless sector is in better condition than the wireline telecom sector, but aggressive attempts at gaining market share may lead to pricing pressure among wireless players. Such actions could wreak havoc on an already unstable marketplace
    - "The market is moving closer to a "zero sum" game where **one carrier's growth comes largely at the expense of other carriers**"
    - "The decelerating growth comes at a time when carriers are investing heavily to upgrade their networks such that even the large investment grade carriers are net users of cash and are **not yet generating positive returns**... We are becoming **increasingly concerned** about these prospects... the risk profile of all wireless carriers has increased"
    - For non-investment grade carriers with weaker capital structures, the situation is more acute. Many of the business plans...are predicated on the existence of larger, more robust wireless markets"
  - "Consolidation in the industry could alleviate the stress on the wireless business model... it is uncertain when consolidation in the industry will take place, if permitted at all"

# Historical High Yield Trading Levels

January 1, 2001 - July 10, 2002

- Liquidity concerns surrounding wireless carriers have put meaningful pressure on the prices of high yield securities in the wireless sector

Bid Price  
(% of par)



Source: Morgan Stanley Database

# Selected Telecom High Yield Trading Levels <sup>(1)</sup>

Issuer	Face Amount \$	Coupon %	Security	Maturity	July 2002 Ratings		Bid Price \$	Yield-to-Worst %
					Moody's	S&P		
<b>Wireless</b>								
<b>AT&amp;T "Affiliates"</b>								
AT&T Wireless	2,000	8.125	Notes	5/1/2012	Baa2	BBB	80.25	11.54
American Cellular	700	9.500	Senior Subordinated Notes	10/15/2009	Caa3	CCC	18.75	62.31
Triton PCS	512	0/11.0	Senior Subordinated Discount Notes	5/1/2008	B2	B-	60.63	20.63
Triton PCS	350	9.375	Senior Subordinated Notes	2/1/2011	B2	B-	63.38	17.90
Triton PCS	400	8.750	Senior Subordinated Notes	11/15/2011	B2	B-	60.63	17.43
<b>Sprint "Affiliates"</b>								
Sprint Corp	2,000	8.375	Notes	3/15/2012	Baa3	BBB-	81.50	11.80
Argate PCS	300	0/13.5	Senior Subordinated Discount Notes	10/1/2009	Caa1	CCC	24.38	35.48
Alamosa PCS	250	12.500	Senior Notes	2/1/2011	Caa1	CCC	32.25	42.20
Horizon PCS	175	13.750	Senior Notes	6/15/2011	Caa1	CCC	38.63	40.20
iPCS	250	0/14.0	Senior Discount Notes	7/15/2010	Caa1	CCC	15.00	40.33
IWO Holdings	160	14.000	Senior Notes	1/15/2011	Caa1	CCC+	39.63	38.44
UbiquiTel	300	0/14.0	Senior Subordinated Discount Notes	4/15/2010	Caa1	CCC	10.00	51.07
US Unwired	400	0/13.375	Senior Subordinated Discount Notes	11/1/2009	B3	CCC+	28.63	32.93
<b>Nextel "Affiliates"</b>								
Nextel Comm.	1,627	0/9.95	Senior Discount Notes	2/15/2008	B3	B	49.00	25.99
Nextel Comm.	2,000	9.375	Senior Notes	11/15/2009	B3	B	53.00	22.87
Nextel Partners	520	0/14.0	Senior Discount Notes	2/1/2009	B3	CCC+	31.00	35.48
Nextel Partners	225	12.500	Senior Notes	11/15/2009	B3	CCC+	44.00	33.27
Nextel Partners	400	11.000	Senior Notes	3/15/2010	B3	CCC+	41.00	32.62
<b>Other</b>								
Centennial Cellular	370	10.750	Senior Subordinated Notes	12/15/2008	B3	B-	45.38	30.70
Dobson Comm.	160	11.750	Senior Notes	4/15/2007	NR	NR	65.63	24.32
Dobson Comm.	300	10.875	Senior Notes	7/1/2010	B3	B-	61.25	21.13
Dobson Sygnet	200	12.250	Senior Notes	12/15/2008	B3	NR	60.38	24.92
Leap Wireless	668	0/14.5	Senior Discount Notes	4/15/2010	Caa2	CCC	3.00	82.75
Leap Wireless	225	12.500	Senior Notes	4/15/2010	Caa2	CCC	10.00	121.23
NTELOS	280	13.000	Senior Notes	8/15/2010	Caa3	CCC+	40.00	36.38
Rural Cellular	300	9.750	Senior Subordinated Notes	1/15/2010	B3	B-	47.63	25.93
Western Wireless	199	10.500	Senior Subordinated Notes	2/1/2007	B3	CCC+	44.75	36.11

## Industry Conclusions

- Capital market activity since early 2002 suggests that there are significant problems currently plaguing the industry
  - Assess to capital continues to tighten with concerns such as those with WorldCom
- Morgan Stanley Research investment thesis is as follows:

Positives	Concerns
<ul style="list-style-type: none"><li>• Still strong topline</li><li>• Valuations attractive if expectations delivered</li><li>• Negative news seems to be priced in</li><li>• Wireless data is starting to happen, but limited revenue impact so far</li></ul>	<ul style="list-style-type: none"><li>• Pricing pressure is intense and expected to continue</li><li>• Heavy CapEx investment in boosting network capacity and upgrades</li><li>• Subscriber acquisition cost still high</li><li>• Subscriber slowdown growth mostly in low-end users</li></ul>

- Wireless companies are expected to have problems as they sort through industry issues
  - Cost cutting, de-leveraging, price stabilization and consolidation are key as companies navigate through to improving fundamentals



## **CERTIFICATE OF SERVICE**

I, Susanne G. Martin, hereby certify that copies of the foregoing Petition for Waiver were served via hand-delivery on the following this 1<sup>st</sup> day of August 2002:

Marlene H. Dortch  
Secretary  
FEDERAL COMMUNICATIONS COMMISSION  
236 Massachusetts Avenue, NE – Suite 110  
Washington, DC 20002

Office of Chairman Powell  
FEDERAL COMMUNICATIONS COMMISSION  
236 Massachusetts Avenue, NE – Suite 110  
Washington, DC 20002

Office of Commissioner Abernathy  
FEDERAL COMMUNICATIONS COMMISSION  
236 Massachusetts Avenue, NE – Suite 110  
Washington, DC 20002

Office of Commissioner Copps  
FEDERAL COMMUNICATIONS COMMISSION  
236 Massachusetts Avenue, NE – Suite 110  
Washington, DC 20002

Office of Commissioner Martin  
FEDERAL COMMUNICATIONS COMMISSION  
236 Massachusetts Avenue, NE – Suite 110  
Washington, DC 20002


Office of Bureau Chief  
Wireless Telecommunications Bureau  
FEDERAL COMMUNICATIONS COMMISSION  
236 Massachusetts Avenue, NE – Suite 110  
Washington, DC 20002

Auctions and Industry Analysis Division  
Wireless Telecommunications Bureau  
FEDERAL COMMUNICATIONS COMMISSION  
236 Massachusetts Avenue, NE – Suite 110  
Washington, DC 20002

Policy Division  
Wireless Telecommunications Bureau  
FEDERAL COMMUNICATIONS COMMISSION  
236 Massachusetts Avenue, NE – Suite 110  
Washington, DC 20002

Office of General Counsel  
FEDERAL COMMUNICATIONS COMMISSION  
236 Massachusetts Avenue, NE – Suite 110  
Washington, DC 20002

Office of Managing Director  
FEDERAL COMMUNICATIONS COMMISSION  
236 Massachusetts Avenue, NE – Suite 110  
Washington, DC 20002

  
\_\_\_\_\_  
Susanne G. Martin